

RECEIVED

SEP 08 2004

Arizona Department of Education
Exceptional Student Services

BEFORE THE GOVERNING BOARD
OF THE
DEER VALLEY UNIFIED SCHOOL DISTRICT
MARICOPA COUNTY, ARIZONA

IN THE MATTER OF THE DUE PROCESS
HEARING REQUEST IN BEHALF OF [REDACTED]
STUDENT,

Petitioners,

v.

DEER VALLEY UNIFIED SCHOOL DISTRICT,

Respondent.

ADOE No. 05-006 Exp

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER**

BERYL I. DULSKY
Hearing Officer

INTRODUCTION

This matter began with the filing of a request for an expedited due process hearing by [REDACTED] (Student), Parents on [REDACTED] alleging "educational placement". The due process request goes no further in directly detailing the problem complained of. However, it was readily apparent that the complaint referred to an allegedly improper proposed placement of the Student by the Student's IEP team at the [REDACTED] thereby preventing him from attending his neighborhood school, Boulder Creek High School (Boulder Creek). This followed extensive activity by the Deer Valley Unified School District (District) and the Parents with the incident involving the Student which led to the proceedings.

The parties have been represented throughout as noted on the Cover Page, which is for identification purposes of the parties, counsel, and the Arizona Department of Education, Office of Exceptional Student Services only and not to be transmitted to other persons along with this document.

The request for due process was based on an incident which occurred on [REDACTED]. The incident occurred seven days before the ending of the school year, and the Student was suspended on that date for the balance of the school year, following a meeting among the Parents, the Students and

1 various members of the [REDACTED] staff.

2 The matter began with a report by two Students to the Assistant Principal of [REDACTED] that
3 the Student had in his possession an "Assassination List" which he had written. This resulted in
4 immediate action by the school authorities, including the suspension as stated above, the referral of the
5 matter to the [REDACTED] Threat Assessment Team, further referral to the District Threat Assessment Team,
6 the convening of the Student's IEP Team on [REDACTED], a manifestation determination review, a
7 recommended change of special education disability from Specific Learning Disability (SLD) to
8 Emotional Disability (ED), and a change of placement from the public school the Student was to attend
9 the following school year (2004-2005), Boulder Creek, to a more restricted environment, [REDACTED]

10 The hearing could not be held within the ten days required by the Expedited Due Process Hearing
11 Request rules due to the prior engagement of counsel for the District in the United States District Court,
12 Phoenix. However, during the Initial Pre-Hearing Conference conducted by telephone on [REDACTED],
13 [REDACTED], the District agreed to provide the Student at his home with all services and education he would
14 have received had he been permitted to attend school. Accordingly, the Parents consented to the hearing
15 taking place after the expiration of the ten-days as required by law. Parenthetically, the Parents stated
16 at the hearing that they are "very satisfied" with the services being provided.

17 The hearing was held in a conference room at the Deer Valley United School District offices on
18 [REDACTED]. At the conclusion of the hearing, the District volunteered to continue the
19 provision of services and education to the Student at his home pending the outcome of this matter,
20 including an appeal, if necessary, to the Arizona Office of Administrative Hearings.

21 There is considerable agreement between the parties hereto as to the essential facts, although
22 there are some non-material disputes by the Parents as to the presence of certain persons at the initial
23 meeting on [REDACTED]. There are no issues of law in this matter; it can be resolved in its entirety
24 on the evidence received, both testimonial and documentary, and its interpretation.

25 The sole issue to be resolved in this matter is whether the change of placement of the Student
26 to [REDACTED] rather than his neighborhood public school, Boulder Creek, is appropriate under the facts and
27 circumstances as shown by the evidence.

STATEMENT OF THE CASE

On [REDACTED] two students at [REDACTED], the elementary school at which the Student was an [REDACTED] grade student, reported to the assistant principal of the school, that the Student had shown her a piece of paper entitled "Assassination List" which contained names of fellow students. One student also stated that the Student had told her that the students on the list had made fun of him and had been mean to him. The reporting student also said that there were "tally" marks next to each name which the Student explained as being the number of times each had made fun of him and that he was going to kill them by shooting them.

The assistant principal immediately went to the Student's classroom and brought him back to the office. Upon being questioned by the assistant principal, the Student at first denied writing the list. The Student gave permission for a search of his backpack, the assistant principal found the list and asked the Student about it; he stated that he was just "blowing off steam".

The assistant principal then called the Student's Parents and asked them to come to the school which both did. They signed a Discipline Referral Form presented to them by the assistant principal, who also, immediately, suspended the Student for the seven day balance of the school year giving the Parents a letter to that effect.

The assistant principal then referred the matter to the [REDACTED] Threat Assessment Team which determined that the Student's Risk Category for "Targeted Lethal Violence" was "High" (the second highest level of risk), and that his Risk Category for "General Aggression Recidivism" was "Moderate" (the next lower risk level).

Following the District Threat Assessment Procedure, the matter was taken up by the District Threat Assessment Team on [REDACTED] which, in turn, came to the same conclusions as the School Team had done.

The Student's IEP Team convened on [REDACTED], conducted a manifestation determination review, concluding that the Student's behavior was not a manifestation of his disability, discussed and recommended various options including changing the Student's eligibility from SLD to ED and placement at [REDACTED], thereby removing him from attending the District public schools including Boulder

1 Creek.

2 A meeting was thereafter held on [REDACTED], which confirmed the [REDACTED]
3 recommendations: namely, that the Student's eligibility was changed to ED; that he would not be
4 permitted to attend Boulder Creek, and that he would be placed at [REDACTED] for the current (2004-2005)
5 school year.

6 The Parents filed their due process request the following day, [REDACTED].

7 FINDINGS OF FACT

8 1. The Student was born on [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 (Grandmother *, Exhibit 20, p.2).

12 2. The Student's most recent IEP is dated April 15, 2004 and to run until April 15, 2005. (Ex.
13 11)

14 3. The Student has been receiving special education services since the second grade to address
15 reading and written language needs. (Exhibit 20, p.2).

16 4. The Student received counseling to address anger management concerns from the 3rd through
17 the 5th grades. (Grandmother, Exhibit 20, p.2).

18 5. The Student has been described as "impulsive, cooperative, good-natured, obedient, easily
19 frustrated, wanting to please, having few friends, getting his feelings hurt easily, giving up easily, feeling
20 insecure, awkward, considerate of others, dependable, and liking school". (Ex. 20, p.2).

21 6. The Student has been determined by the most recent Behavior Assessment System for
22 Children (BASC) as being at risk for hyperactivity and aggression among several other areas.. (Ex. 20,
23 p.3, Forensic Psychologist, School Psychologist).

24 7. The Student entered into a Behavior Contract with the District on May 20, 2003. (Ex. 4,
25 Assistant Principal).

26 8. In [REDACTED], 2003, the Student wrote a note to another student which was interpreted as having
27 (* Refers to testimony of described witness)

1 tones of suicide and resulted in a threat assessment conducted [REDACTED] 2003. (Assistant Principal, Exs.
2 6 & 7)

3 9. The Student punched another student on [REDACTED] 2003, which also resulted in a disciplinary
4 referral. (Assistant Principal, Ex. 8).

5 10. There are other indications of aggressive behavior of a minor nature by the Student
6 connected with frustration of various sorts such as in sports. (Assistant Principal).

7 11. The Student had no disciplinary referrals during the school year, 2003-2004, until [REDACTED],
8 2004. (Assistant Principal & Ex. 15, p. 4)

9 12. On [REDACTED] 2004, two students reported to the assistant principal that the Student had shown
10 one of them (who, in turn, showed it to the other student), a piece of paper entitled "Assassination (sic)
11 List" which contained the names of 19 fellow students with "tally marks" next to each name and a 20th
12 reference to "anyone who tries to stop me". (Assistant Principal, Ex. 16, pp. 32 & 33).

13 13. The Student, upon being brought to the school office and questioned by the assistant
14 principal, at first, denied having written the list. (Assistant Principal).

15 14. The assistant principal found the list in the Student's backpack upon searching it after having
16 received permission to do so. (Assistant Principal).

17 15. The Student then admitted writing the list but denied having written the words,
18 "Assassination (spelling corrected) List" and stated that he was "just blowing off steam". (Assistant
19 Principal & Ex. 12).

20 16. The Student was suspended from attending school for the balance of the school year (seven
21 days) and prohibited from participating in the promotion ceremony and the dinner dance for those
22 students who had completed the [REDACTED] grade which included the Student. (Assistant Principal, Exs. 12
23 & 13).

24 17. The Student later admitted having written the words, "Assassination List" and stated that
25 he had done so because the students he had named had "made fun" of him by calling him "fat", stating
26 that he "stinks" from body odor and had "been mean" to him. (Ex. 16, pp. 22-26).

27 18. The Student also admitted drawing two pictures in his notebook, which he described as "just
28

1 a picture of a clown/jester holding a gun and the other is just a character holding a gun on someone"
2 which he stated meant "nothing, ** just a drawing"). (Ex. 16, p. 25).

3 19. The Student later stated that he had attempted to locate the keys to his grandfather's gun safe
4 in the home and that he had a "backup plan" to obtain a gun from a friend. (Forensic Psychologist &
5 Ex. 16, p.4/5).

6 20. The Student also stated that the "E" and "F" alongside names of fellow students in the school
7 yearbook as noticed by Maricopa County Sheriff's Deputies stood for "Enemy" and "Friend". (Ex. 16,
8 p 4/5).

9 21. Eighteen of the students named in the "Assassination List" upon being asked by a Maricopa
10 County Sheriff's Deputy admitted that they had made fun of or teased the Student by calling him fat and
11 ugly, making fun of his body odor while in his presence, telling him that he "stinks" and also said that
12 the reason he had written the list was because he was "angry with everyone who has made fun of him."
13 (Ex. 16, pp. 27 & 28).

14 22. A threat assessment was conducted by the [REDACTED] Threat Assessment Team on [REDACTED]
15 [REDACTED] 2004, at which it was determined that the Student's Risk Category for "Targeted Lethal Violence"
16 was "High" and for "General Aggression Recidivism" was "Moderate". (Assistant Principal, School
17 Psychologist & Ex. 15).

18 23. A threat assessment was conducted on [REDACTED] 2004, by the District Threat Assessment
19 Team at which it was determined that a recommendation be made to the Student's IEP team that he be
20 placed in a private day school/EDP facility for the 2004-2005 and that he not attend school on a District
21 campus for that year and that he never be allowed to attend Boulder Creek. (Forensic Psychologist,
22 School Psychologist & Ex. 17).

23 24. The Student's IEP team was convened on [REDACTED], at which a manifestation
24 determination review was conducted which resulted in a determination that the writing of the
25 "Assassination List" was not a manifestation of his disability. (Ex. 25).

26 25. The IEP team also determined that the Student was eligible for ED. (Ex.25).

27 26. The IEP team determined that the proper placement for the Student was [REDACTED], a private,
28

1 Arizona Department of Education approved day school. (Ex. 27)

2 27. A Modified Special Education Re-Evaluation was conducted by the school psychologist, in
3 which the BASC showed the Student to be at risk in the areas of hyperactivity and aggression and in
4 which it was recommended that the IEP team consider changing his eligibility to ED; that he be placed
5 "in an LRE to develop appropriate anger management and problem solving skills to deal with students
6 who bully or belittle others"; that "he attend a self-contained classroom where there is much
7 supervision"; that he "receive psychotherapy to address his emotional needs; and that "he have the
8 opportunity to earn his way back to regular education classes" pursuant to "very firm and specific"
9 criteria. (Ex. 20).

10 28. It was agreed by the professional staff that the Student could not be recommended for
11 placement at either Boulder Creek or Sandra Day O'Connor High School in the District because of his
12 emotional disability and necessary treatment not available within the District. (Forensic Psychologist
13 & School Psychologist).

14 29. [REDACTED] has 260, mostly disabled, students; maintains two high school programs - 100 in a
15 traditional program and 40 in a vocational program in addition to K-6 and middle school programs;
16 teachers must be certified in specific areas such as ED, autism, etc.; there are a teacher, assistant and
17 behavior coach in each classroom which is beyond the Arizona state requirements one teacher for eight
18 students or twelve students with a teacher and an assistant; there are four therapist counsels on staff who
19 conduct anger management, impulse control, organization and social skills classes, etc.; the goal is to
20 transition students back to the public schools in their home districts; the Student fits the profile for
21 students at [REDACTED] in a number of areas; a student with an IEP will also have "exit criteria" developed
22 to fit that individual case; [REDACTED] is a "closed campus"; approximately 20% of students are transitioned
23 after about two and one-half years at [REDACTED] on average. ([REDACTED] School Psychologist).

24 30. The United States Secret Service manuals on managing threatening situations in schools sets
25 forth a "pathway or continuum of violence": (1) conceptualization of violence; (2) preparation for
26 violence; (3) rehearsal of violence; and (4) the violent attack itself. (Forensic Psychologist & Ex. C).

27 31. The Student had both conceptualized the violence and made some preparations for it - the
28

1 writing of the "Assassination List" and attempting to obtain a gun. Psychologist).

2 32. Expulsion based on the incident was an option explored by the Threat Assessment Teams
3 but was ruled out because the Student is in need of therapy and counseling to learn how to cope with his
4 problems and frustrations. (Forensic Psychologist).

5 33. The Student, not only poses a danger to others as shown by his behavior, but is in danger,
6 himself, of possible retaliation by students threatened by their inclusion on the "Assassination List".
7 (Forensic Psychologist).

8 34. The Student does not have a long history of seriously aggressive behavior; however, that is
9 not an indicator that he may not act out at some point in the future if his needs remain untreated.
10 (Forensic Psychologist).

11 35. Three people testified in behalf of the Student and three other persons submitted letters in
12 his behalf as agreed to by the parties; all six of those people stated that they have never seen him act in
13 an aggressive or abusive manner towards other children. (Witnesses for Petitioners).

14 36. The Student was described as a "very good kid with very serious issues" and can be helped
15 greatly in a therapeutic setting provided by a private day school such as [REDACTED] the latter being the
16 proper placement. (Forensic Psychologist).

17 37. The report of the Examining Psychiatrist, while seemingly weighted towards keeping the
18 Student at Boulder Creek, does not rule out his "transfer to another school" so long as "every effort is
19 made to make this transition smooth". (Ex. B).

20 CONCLUSIONS OF LAW

21 A. STATUTES AND REGULATIONS

22 20 U.S.C. 1414 - Evaluations, eligibility determinations, individualized education programs, and
23 educational placements.

24 20 U.S.C. 1415 - Procedural safeguards.

25 34 C.F.R. § 300.519 - Change of placement for disciplinary removals.

26 34 C.F.R. § 300.520 - Authority of school personnel.

27 34 C.F.R. § 300.523 - Manifestation determination review.

1 34 C.F.R. § 300.550 - General LRE requirements.

2 34 C.F.R. §300.553 - Continuum of alternative placements.

3 34 C.F.R. §300.552 - Placements.

4 A.A.C. R7-2-405 - Due Process Standards Relating to Special Education

5 Specifically, A.A.C., R7-2-405(I) - Expedited Hearings

6 B. SPECIFIC CONCLUSIONS OF LAW

7 1. The Student, as is agreed by friends and District staff is a "very good kid"; unfortunately, he
8 is a person suffering from an emotional disability and is in the "high" risk category for "Targeted Lethal
9 Violence" and the "moderate" risk category for "General Aggression Recidivism". Despite this, he is
10 an excellent subject for successful treatment if proper provisions are made for his schooling, placement
11 and treatment.

12 2. All necessary procedures required by law and District policy have been more than merely
13 adequately complied with. Every effort to protect the Student and his rights was made, including the
14 full participation of his Parents [REDACTED] at all stages of the proceedings
15 involving the Student.

16 3. The Least Restrictive Environment for the Student is a private day school approved by the
17 Arizona Department of Education affording close supervision in small classes, providing counseling and
18 therapy for emotionally disturbed students and holding out the possibility of transitioning back to his
19 home school District.

20 5. There are no facilities at present in the District in which the Student can both thrive and be
21 safe, as well as not be a possible threat to others and himself, by receiving the counseling and therapy
22 necessary to treat his problems successfully.

23 6. [REDACTED] is the sole appropriate placement available for the Student and it stands ready to
24 receive him and meet his needs.

25 ORDER

26 THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the evidence,
27 both testimonial and documentary, and the pleadings and arguments of the parties, it is hereby

1 ORDERED that the Student, [REDACTED], be placed immediately in the [REDACTED]

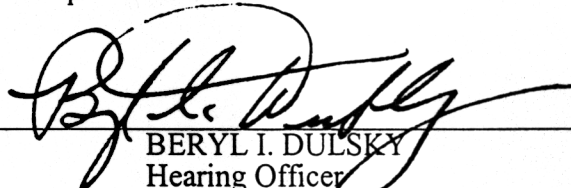
2 [REDACTED] where he shall receive special education services in accordance with the Individualized
3 Education Program developed by the team assembled by the Deer Valley Unified School District and
4 in accordance with any modifications thereof duly adopted for the current school year (2004-2005), and
5 it is further

6 ORDERED that transportation to and from the [REDACTED]
7 be provided to the Student by the Deer Valley Unified School District at no cost to the Student or his
8 family, and it is further

9 ORDERED that the Student's Individualized Education Program be reviewed in all aspects,
10 specifically with relation to the Students progress thereunder, on at least a quarterly basis, and it is
11 further

12 ORDERED that appropriate exit criteria be developed for the Student so that he may transition
13 back to the Deer Valley Unified School District as soon as is practicable.

14 DATED: September 6, 2004

15 
16 BERYL I. DULSKY
17 Hearing Officer
18
19
20
21
22
23
24
25
26
27
28